NONPROFITS: UBIT/UNRELATED BUSINESS INCOME

The Fringe Benefits Tax: Hope for Repeal

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The 2017 Tax Cuts and Jobs Act (TCJA) made sweeping changes in the federal tax code affecting almost all entities and individuals after a whirlwind frenzy of activity beginning just weeks before the end of that year. Many lawmakers privately acknowledged they had not read the entire bill before they voted to pass it; they were surprised and dismayed at many parts of this hasty legislation.

Among **the least popular** of the provisions affecting nonprofit organizations – (and there is robust competition for this honor) – is the new taxation of certain fringe benefits related to worker transportation and parking. In a nutshell, Section 512(a)(7) of the Internal Revenue Code newly imposes an unrelated business income tax (UBIT) on the expenses of nonprofits that provide employees with transportation benefits including transit passes and parking. To make matters worse, and contrary to custom and practice, there was no transition period. On January 1, 2018, it went into effect just days after the bill was signed at the White House.

Throughout 2018, lawmakers on Capitol Hill have heard **howls of protest** from the nonprofit sector, especially as the first tax-filing deadlines have come closer and closer. But lawmakers took no meaningful action last year to modify or repeal this law.

The only movement was from the Treasury/IRS which published **two interim guidance notices** in December 2018 to help answer questions about how to comply with the new UBIT tax. The general consensus is that this effort was unsuccessful, in large part because the statute was so ill-advised and poorly crafted in the first place. The Treasury indicated it would propose regulations in the event Congress failed to act on repeal, and asked for comments on the interim guidance. That apparently went over like a lead balloon.

Fringe Benefits Repeal: Momentum

With each passing month in the new Congress, the pressure on lawmakers has grown. They know that professional advisors **are warning many organizations** in their districts to make changes in their employee fringe-benefits packages or be prepared to deal with the new unrelated business income tax liability and the accompanying administrative burden of making complex calculations and filing unfamiliar returns.

Leaders in the nonprofit sector have expressed mounting concerns. According to Daniel J. Cardinali, president and CEO of Independent Sector, "these (UBIT) provisions divert precious funds away from missions and the communities who need it most." He added: "We heard from nonprofit leaders who were concerned about the impact of these taxes and confused about how they were going to be implemented."

Suddenly, there are stirrings on Capitol Hill.

Lawmakers in the House as well as the Senate – from both parties – have written companion bills **to repeal** the 21-percent tax on the value of transportation-related fringe benefits. The primary sponsors in the Senate are James Lankford (R-OK) and Chris Coons (D-DE). Key House sponsors are Tom Suozzi (D-NY) and Mark Walker (R-NC).

Action on Bipartisan Repeal Bills

The House bill was referred to the Ways and Means Committee. On Wednesday, March 27, 2019, Chair Richard Neal (D-MA) opened the initial hearing; the designated topic was "***The 2017 Tax Law and Who It Left Behind.***" He lauded the action, noting it was the "first time" since passage of the TCJA that the House had the opportunity for a "thorough review of the new law and its impact on American families and the economy."

This opening session ran some 4-½ hours, and Rep. Suozzi grabbed the opportunity toward the end to raise the issue of repeal of the new transportation fringe-benefits UBIT tax. "**One other group that's been left behind**," he explained to his fellow Committee members, " are charities and not-for-profits. As hard as it is to imagine, as part of this tax bill there's a new tax on charities, and not-for-profits. If you are a religious institution, you're a church, a synagogue, or you're a mosque, and you give parking permits to your employees, or if you give them transportation allowances, they have to pay taxes on it now." Rep. Suozzi noted, too, that now these organizations must hire an accountant to help fill out these complex tax forms.

Among the witnesses was Lauren Precker, social communications and strategy manager at ASAE: The Center for Association Leadership. She explained that the "unrelated business income tax (UBIT) is proving to be **a burden for tax-exempt groups, including churches and small charities** that have little or no experience dealing with the Internal Revenue Service … and insufficient guidance on how to calculate the value of parking and other benefits provided to their employees."

According to David Thompson, vice president of public policy for the National Council of Nonprofits, "there is **not a single representative or senator** who thinks this tax on nonprofit transportation benefits should survive."

Conclusion

Tim Delaney, president and chief executive officer of the National Council of Nonprofits, has summed up the situation, urging retroactive repeal as soon as possible: "Taxing tax-exempts is the very definition of an oxymoron. But worse, this tax is also illogical, unworkable, and unfair." Mirroring comments by his organization's vice president for public policy, Mr. Delaney added: "Almost everyone in Congress acknowledges it was a mistake, an error, and this legislation shows there is bipartisan support for its repeal."

While the bottom line is that Congress should act in due course to eliminate this unfortunate statute, it would certainly be a big help if it could be done in time to save hundreds of thousands of nonprofits unnecessary expense and administrative burden in connection with tax year 2018.